



ROCKY MOUNTAIN CORPORATION FOR PUBLIC BROADCASTING

1603 Sigma Chi Road, N.E.

Albuquerque, New Mexico 87106

505-242-6930



May 15, 2002

The Secretary
FCC
Washington DC 20002

Re: MM Docket 95-31:

INFORMAL COMMENTS
IN RESPONSE TO THE COMMISSION'S
SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

1. The Rocky Mountain Corporation for Public Broadcasting (RMCPB) respectfully submits informal comment on the FNPRM Docket No. 95-31, February 14, 2002.

RMCPB is a membership organization of public broadcasting stations and entities in the Rocky Mountain states, independent of the Corporation for Public Broadcasting and receiving no federal funding. Its purpose is to enhance development and operation of public broadcasting in the Rocky Mountain States—and increasingly to ensure service to our isolated rural communities and areas.

Our intent is to react briefly to some of the questions posed in the FNPRM within the context of the special challenges of our unique region and the evolution of rural NCE-FM public radio and rural PTV service in it.

2. Since 1968 RMCPB has assisted Public Radio and Public TV stations in the Rocky Mountain states in securing FCC authorization, and PTFP funding assistance, for stations, translators and interconnection facilities to extend service to the unserved and maintain existing service in our vast and thinly populated region.

Citizens in remote, rural and isolated areas enjoy the free commercial and non-commercial broadcast services they deserve, and need, because the Commission wisely authorized translators to meet the special geographic, topographic and demographic challenges of this region.

Translators were then clearly the appropriate technology in extending broadcast service efficiently and cost-effectively. No one foresaw a future when they would be the endangered species they are today! Nor a future when NCE reserved frequencies would be unavailable for replacement station filings.

3. But, in the 90's the Commission saw fit to—in the words of a former Governor of New Mexico—“open a box of Pandoras”. It allowed satellite-fed "local" stations, and the unintended but predictable consequence was a “land rush” of applications by NCE--but non public--radio licensees.

And when the “incredible shrinking TV spectrum” shrank again with the deletion of Channels 52-59, TV stations—commercial and public--are hard pressed to maintain existing analog service to our rural communities through an inevitably lengthy period of conversion transition.

4. So, when the FNPRM asks in re **Option 1**, “*Do NCE entities have sufficient reserved spectrum available to them in the areas they wish to serve?*”, there is a simple and obvious answer:

No!

The Romans had the words for it. It speaks for itself. That it needs be asked at all is answer in itself. Why would they apply in the non-reserved band if reserved spectrum were available?

In our region there are virtually **no frequencies available** for new public radio or PTV applications—either to extend public broadcasting service to unserved areas and communities or simply to continue existing service.

The FNPRM also asks: *Are future opportunities to obtain licenses disproportionately located in either the reserved or non-reserved bands?* And again there is a simple and obvious answer:

Yes!

The reserved band still contains only 20 channels, while non-reserved allocations increase the opportunity in that band. **The original 20:100 ratio should be maintained by designating additional channels as reserved.**

Option 1: is unacceptable and inappropriate unless it is Commission intent to limit public broadcasting service to present, or reduced, coverage areas and to preclude future extension of service to the unserved.

5. Option #2: Permit NCE entities to acquire licenses for non-reserved channels and frequencies when there is no conflict with commercial entities.

More productive than #1, but impossible to guess how much more.

Proposed resolution when only commercial or NCE applicants file on a given frequency is reasonable. However, it is not reasonable, if both kinds file on same channel, that only the NCE applicant be at risk. Instead the Commission could **require good faith effort by both for technical resolution or settlement and then, absent resolution, reject both**. Under this approach, there would be incentive for each applicant to try to settle or reach an engineering solution. In this context, the Commission should **amend its anti-collusion rules** to accommodate engineering and other settlements to resolve mixed groups

6. Option #3: Provide NCE entities additional opportunities to reserve channels in the Table of Allotments.

Should the Commission implement this Option, it should certainly **further expand present criteria for future allocations, and apply and/or modify them for vacant allotments**.

Future Allocations. The definition of “technically precluded” should turn on the availability of equivalent facilities, and **not** on the availability of some minimum class of facilities. **Minimal facilities incapable of effectively providing the service intended cannot suffice.**

Vacant Allotments. The Commission should establish a procedure for NCE entities to show that **these vacant allotments should be reserved under the relaxed criteria. The reservation criteria where the channel has already been allocated through a rulemaking should be the same as the criteria to reserve a channel in a future allocation proceeding.**

Other Options. While well intentioned, according NCE entities more flexible approaches to reserving additional FM and TV channels for NCE use, including channels that have been allocated but not yet licensed, and the ability to operate on non-reserved channels and frequencies if no commercial entities apply for those channels and frequencies will fall woefully short of ensuring that NCE entities have reasonable opportunities to obtain the spectrum they need.

That laudable goal is achievable only by making additional reserved frequencies available for NCE entities to obtain through traditional application procedures.

7. Additional Issue Concerning LPTV and TV Translators.

Given Congressional intent and judicial interpretation of that intent, we believe the Commission should **reconsider licensing policies for services in which it does not currently license NCE entities as such.**

It should then resolve those mutually exclusive NCE-only groups through the NCE point system we have established for full-power broadcast services?

CONCLUSION

The Commission is to be commended for its effort to address a problem critical for it and for all broadcasters.

RMCPB believes Option 1 is unacceptable unless it is Commission intent to contravene Congressional declarations of national policy and curtail existing public broadcasting service and preclude future extension of service to the unserved.

Options 2 and 3 will ameliorate the problem to some degree but are not likely to resolve it.

The only true remedy would be **to increase the number of reserved channels--by redesignation of some non-reserved frequencies or by adding new spectrum for radio broadcast use.**

Respectfully submitted,

ROCKY MOUNTAIN CORPORATION FOR PUBLIC BROADCASTING

By E.W.Bundy /s/
E. W. Bundy, Ph.D.
Executive Director

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